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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,749	07/17/2003	W. John Gardenier	1442.033B	1803
7590 05/02/2007 John Pietrangelo Heslin Rothenberg Farley & Mesiti P.C. 5 Columbia Circle Albany, NY 12203			EXAMINER PHILLIPS, CHARLES E	
			ART UNIT 3751	PAPER NUMBER
			MAIL DATE 05/02/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/621,749

Applicant(s)

GARDENIER ET AL.

Examiner

Charles E. Phillips

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 65,66,68-70,73,74,77,80 and 84-92 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 65,66,68-70,74,77,80 and 84-92 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____   | 6) <input type="checkbox"/> Other: _____                          |

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 65-92 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims are now directed to a headrest with an electronic speaker and a sound wave distributor. There is no support for this combination in the Fig. 9 embodiment, elected in the 6/28/04 paper, that is, Fig. 9 does not include "a sound wave distributor", nor is one discussed in the description of this figure in paragraphs 62-63. Applicant's arguments, in the 3/13/07 communication, i.e. "that is, for the sake of illustrating an alternate aspect of the invention, Figure 9 is shown with a wired "electronic speaker," but, as is clear from the text, speaker 244 may also be a "wave-guide-type speaker." That is, a "wave-guide-type speaker" that inherently includes some from of "sound wave distributor." A wave-guide type speaker must receive sound waves from somewhere and therefore must include a "sound wave distributor", is not well taken in that the only mention of "sound wave distributor" in the instant disclosure is to element 40 of Fig. 2. To employ this term for what applicant states as "inherent" is unsupported by the instant disclosure. To argue that there must be some form of "sound wave distributor" where none is shown nor disclosed does not meet the 112 parameters. Furthermore if this is inherent in any sound scheme why is it being promoted as possessing patentable merit? To further

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diminish the thrust of applicant's arguments as outlined supra, applicant now comes with claims such as 84-86,88-91, that call for a "cavity or chamber" which are only disclosed with respect to Fig. 2B. How can this structure be positioned as recited in the last two lines of claim 1?

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 65,68,70, 74, 77,80,87 and 92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ludlow in view of Kvalvik.

Ludlow teaches a tub in Fig. 5, where the headrest 175 is positioned below the upper rim of the spa. Kvalvik teaches a tub T, having a headrest 30 with a speaker and speaker grille 38 therein. In light of this use of a speaker in a headrest, it would have been obvious to the ordinary artisan to employ a speaker in the Ludlow headrest. Such an employment would meet the phrase "below the upper rim as the cushion in Ludlow is below the upper rim. As applicant argues, some form of means to "distribute" the sound would be inherent and such is the case here. This renders full response to claims 65,68,70 and 74,77, 80, 87and 92.

Re: claim 71, as these are well known resilient materials, the use of same would have constituted an obvious expedient of choice in design. Likewise, as the use of marine-

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grade speakers is known in the art, the use of same to perfect this combination would have been obvious to the ordinary artisan as well.

Claims 66, 69 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 65 above, and further in view of Diamond.

Diamond teaches the sound source placement of claim 66 in that the speaker 40 is seen to be fed by wires distal of the speaker. Also taught here are a plurality of speakers 40, in Fig. 1a.

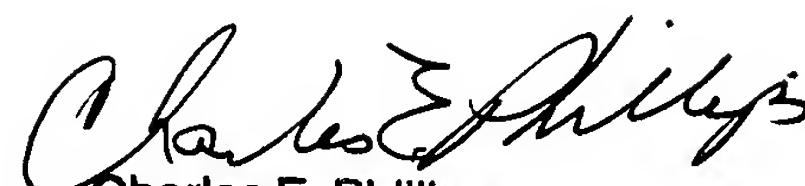
Claim 73 stands withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/28/04. This requirement is made final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Phillips whose telephone number is 571-272-4893. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson, can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Charles E. Phillips  
Primary Examiner